

ARKANSAS COURT OF APPEALS

DIVISION III  
No. CA 08-1069

DYEANN LARRY

APPELLANT

V.

RED CARPET EMPLOYMENT  
AGENCY and TRAVELERS  
INSURANCE COMPANY

APPELLEES

**Opinion Delivered** April 22, 2009

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION  
[NO. F605329 & F605330]

AFFIRMED

**M. MICHAEL KINARD, Judge**

Appellant Dyeann Larry appeals from the Workers' Compensation Commission decision affirming and adopting the administrative law judge's opinion, which denied her claim for temporary total disability benefits. For reversal, Larry argues that the Commission's decision is based on an erroneous application of the law and is not supported by substantial evidence. Finding no error, we affirm.

Appellant was employed at the Red Carpet Employment Agency at the time of her injury. She was assigned to work at Coleman Cable, where she worked twelve-hour shifts as a machine operator. Appellant was responsible for operating seven machines and her duties included using a mechanical "lift" to get large, heavy spools of wire into the machines. Appellant testified that on April 9, 2006, she was using her right arm to maneuver a spool

that had become stuck in a machine when she heard a “pop” in her back and immediately felt pain in the right side of her lower back. She rested for a moment and then went back to work. She experienced a second “pop” in her back about thirty to forty minutes after going back to work following the first incident. As she worked, the pain became worse and spread to her groin area, her thigh, and her leg.

Appellant sought treatment for her injury at Wadley Regional Medical Center in Texarkana, Texas. On April 15, 2006, she went to the Wadley emergency room complaining of low back pain radiating to her right groin. She was given medication, told not to return to work for five days, and instructed to follow up with her family physician. Appellant returned to Wadley on May 1, 2006, and was released with medications and instructed to return if her condition worsened. An x-ray taken on this date revealed a normal examination of the lumbar spine. On her third visit on May 18, 2006, appellant was instructed to get an outpatient MRI of her lumbar spine. An MRI conducted on June 5, 2006, showed an annular tear at L4-5 and a broad-based disc protrusion at L4-5. Appellant began treating with chiropractor Marc Hagebusch, who eventually recommended that appellant have an orthopedic evaluation of her lumbar spine.

Appellant saw Dr. Clemens Soeller, an orthopedist, in November 2006. Dr. Soeller’s notes reflect that appellant complained of low back pain with ambulation and some right leg pain, as well as right hip and leg numbness. Dr. Soeller reviewed the MRI and found it to show that appellant had a tear of the anulus; however, there was “no evidence of nerve

impingement or other significant abnormality which should cause her symptoms.”

Dr. Soeller’s assessment was “leg and back pain of unknown etiology.”

Dr. C. Chris Alkire, also an orthopedist, examined appellant in February 2007.

Dr. Alkire’s notes contain the following:

Today [appellant’s] examination exhibits an extreme amount of exaggeration of symptoms with some positive Waddell’s signs. Neurologically she is intact. Her MRI findings do not come close to matching the amount of pain that she describes subjectively and does not correlate with the findings on her PE as noted above. While there is undoubtedly an abnormal disc at L4/5, it’s mainly a degenerative, age-related type appearance on MRI. . . .

In June 2007, appellant saw Dr. Iftqar Syed for pain management. Dr. Syed prescribed pain medication and explained the benefits of a regular exercise program in managing chronic pain. Later in June, appellant saw Dr. Fred Contreras, a neurosurgeon. Dr. Contreras reviewed her MRI and found a disc herniation at L4-5. Dr. Contreras believed “based upon a reasonable degree of medical probability that [appellant’s] current symptom complex is related to her work injury” and recommended further testing.

In addition to reviewing the medical records outlined above, the ALJ heard the testimony of appellant, who stated that she had been unable to work since her injury. She testified that before her injury she had been a very active person, but after the injury she was in constant pain and was unable to function as she had before. She stated that the pain required her to have help working around her house, that she had to lay down often, and that the pain medication she took made her dizzy and drowsy. Appellant’s husband, Greg Berry,

testified that appellant is “ninety-percent less than herself now” and is close to being an invalid.

In a January 18, 2008 opinion, the administrative law judge (ALJ) found that appellant had sustained a compensable injury and that appellees were responsible for the payment of her past medical treatment and additional treatment recommended by Dr. Contreras. The ALJ also found that appellant failed to prove by a preponderance of the evidence that she was entitled to temporary total disability benefits (TTD). The Commission affirmed and adopted the ALJ’s decision in an opinion dated July 30, 2008. This appeal followed.

Under Arkansas law, the Commission is permitted to adopt the administrative law judge’s decision. *Death & Perm. Total Total Disability Trust Fund v. Branum*, 82 Ark. App. 338, 107 S.W.3d 876 (2003). Moreover, in so doing, the Commission makes the administrative law judge’s findings and conclusions the findings and conclusions of the Commission. *Id.* Therefore, for purposes of our review, we consider both the administrative law judge’s order and the Commission's majority order.

In appeals involving claims for workers’ compensation, our court views the evidence in a light most favorable to the Commission’s decision and affirms the decision if it is supported by substantial evidence. *Hickman v. Kellog, Brown & Root*, 372 Ark. 501, \_\_\_ S.W.3d \_\_\_ (2008). Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *Id.* The issue is not whether the appellate court might have reached a different result from the Commission; if reasonable minds could reach the result

found by the Commission, the appellate court must affirm the decision. *Id.* Where the Commission denies a claim because of the claimant's failure to meet her burden of proof, the substantial-evidence standard of review requires that we affirm the Commission's decision if its opinion displays a substantial basis for the denial of relief. *Id.*

An injured employee is entitled to TTD benefits when she is (1) totally incapacitated from earning wages and (2) remains in her healing period. *See Searcy Industrial Laundry, Inc. v. Ferren*, 92 Ark. App. 65, 211 S.W.3d 11 (2005). Appellant argues at length that she remains in her healing period. This argument is misplaced because the Commission specifically found that appellant remained within her healing period until she received the additional treatment recommended by Dr. Contreras. However, in order to be entitled to TTD benefits, appellant was required to prove by a preponderance of the evidence that she both remained in her healing period *and* was totally incapacitated from earning wages.

The ALJ found that appellant was not totally incapacitated from earning wages. In explaining the bases for this finding, the ALJ noted that the only doctor that recommended that appellant remain off work for any extended period of time was chiropractor Marc Hagebusch, who recommended in his August 16, 2006 report that appellant be excused from work pending an orthopedic evaluation of her lumbar spine; when appellant did get an orthopedic evaluation from Dr. Chris Alkire, Dr. Alkire believed appellant was exaggerating her pain because there was no evidence of nerve impingement or other significant abnormality that would cause her symptoms; pain management specialist Dr. Syed discussed

a regular exercise program for appellant; and, finally, even Dr. Contreras, who recommended additional diagnostic studies, did not indicate anywhere in his report that appellant should remain off work.

As to the finding that she was not totally incapacitated from earning wages, appellant argues only that “[t]he ALJ appears to have hinged his entire decision on the fact [that] no doctor specifically wrote in his or her records that Ms. Larry should remain off work. That is not entirely true, nor is that a requirement of the law. . . [T]here is nothing in the record to rebut Ms. Larry’s testimony concerning her inability to work because of her pain.” The Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Patterson v. Arkansas Dep’t. of Health*, 343 Ark. 255, 265, 33 S.W.3d 151, 157 (2000). Thus, the Commission was free to disbelieve appellant’s testimony that she was unable to work following her injury. We note that it was appellant’s burden to prove her entitlement to TTD benefits. The ALJ had a substantial basis for finding that appellant was not totally incapacitated from earning wages. Therefore, we affirm.

Affirmed.

ROBBINS and BAKER, JJ., agree.